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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO**

THE PEOPLE,

Plaintiff and Appellant,

v.

GENE DELON YEATS,

Defendant and Respondent.

E048649

(Super.Ct.No. INF058760)

OPINION

APPEAL from the Superior Court of Riverside County. Jorge C. Hernandez,
Judge. Reversed with directions.

Rod Pacheco, District Attorney, and Kelli Catlett, Deputy District Attorney, for
Plaintiff and Appellant.

Linda Acaldo, under appointment by the Court of Appeal, for Defendant and
Respondent.

Defendant and respondent Gene Delon Yeats pleaded guilty to three counts of
robbery, one count of evading a police officer, and admitted a prior serious felony
conviction and a prior strike conviction. He agreed to plead guilty on the trial court's

indication that it would sentence him to 11 years in state prison. The People appeal, contending the guilty plea and sentence were the product of unlawful plea bargaining by the trial court. We agree with the People and reverse.

FACTS AND PROCEDURAL HISTORY

Defendant pleaded guilty before trial. The fact statement is derived from the preliminary hearing proceedings. On June 7, 2007, defendant and a codefendant, Edward Jones, approached bank tellers at a branch of Downey Savings that was located inside a grocery store.

Donica Acosta, one of the tellers, was notarizing papers with a customer. The two men approached, leaned over, and tapped the table to get her attention. One of them said, “we’re not playing.” Concluding that the men intended to rob her and the customer she was helping, Acosta activated the silent alarm. The customer stepped back, and one of the men said to Acosta, “Give me everything.” Acosta gave the robbers all the money in her cash drawer.

The robbers then approached another bank employee, Sally Fraijo. The robbers also took the money from Fraijo’s teller drawer, and they ran out of the store. Acosta ran outside to get a look at the robbers, and saw them drive away in a black Toyota Corolla.

Another teller, Yovana Arredondo, gave a similar account. She told the investigating officers that, just as she was about to help another customer, a male subject pushed his way in front of the customer and displayed a note to her. The note said, “This is a robbery.” The robber said, “Hundreds and fifties.” Arredondo began to comply, when the man demanded, “All the money,” saying “I know you have more.”

Arredondo gave the robber all the cash in her drawer. Arredondo saw another man talking to Acosta. The first man joined the second man confronting Acosta, and they got money from Acosta. The men attempted to get money from a third teller, Fraijo, but Arredondo believed they were unsuccessful.

Arredondo and Acosta described the robbers and the getaway car to police. Officers later reviewed bank security photographs depicting the robbers. The men in the photographs matched the descriptions given by the victims.

Another officer received a broadcast bulletin to be on the lookout for a black Toyota Corolla. The officer spotted the Toyota and activated his emergency lights and siren. The Toyota did not stop, but sped away instead. During the pursuit, the speeding Toyota made several unsafe lane changes, nearly struck other cars, and reached speeds over 100 miles per hour. The fleeing Toyota exited the freeway and drove to a residential area. Both the driver and the passenger bailed from the vehicle while it was still moving, and ran away. Police caught the driver, but did not immediately apprehend the passenger. Inside the abandoned car, police found clothing matching that worn by the robbers. The driver, who had been taken into custody, was taken to the sheriff's station for questioning; defendant was identified as the driver of the black Toyota Corolla. Defendant admitted to police that he had taken his sister's car, the black Toyota Corolla, and admitted going to the bank with codefendant Jones. Defendant admitted he was driving during the pursuit.

Defendant was charged by information with three counts of robbery (of the three bank tellers), and one count of failing to yield to a marked police vehicle (Veh. Code,

§ 2800.2). The informations further alleged that defendant had suffered two prior strike serious or violent felonies (Pen. Code, §§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)), and that he had been convicted of two prior serious felonies (Pen. Code, § 667, subd. (a)).

Defendant's trial was originally set for August 2008, but was continued several times. In April 2009, defense counsel requested a conference in chambers. As the prosecutor later described the in-chambers conference, the parties discussed defendant's maximum sentence exposure of 20 years 4 months. The court then stated that, at trial defendant would "most likely" receive a sentence of 16 years 4 months, based on the middle term on count 1 (robbery), consecutive terms on counts 2 through 4 (the two additional robberies plus the felony evading an officer), a five-year prior, and doubling the requisite terms for the strike prior.¹ The court then stated that it would give an "indicated" sentence of 11 years if defendant pleaded guilty before trial, based on the middle term on count 1, doubled as a second strike, plus five years for the prior serious felony conviction. The remaining terms would be run concurrently.

After a delay to consider the matter, defendant pleaded no contest in exchange for the court's "indicated" sentence. The People objected on the ground that the sentence was an illegal plea bargain made by the court. The court overruled the objection, accepted defendant's change of plea, and sentenced defendant to 11 years in state prison.

¹ At some point, the People became aware that one of the convictions alleged as the basis for a strike and a five-year prior, could not be used for those purposes, because the offense underlying those allegations had been committed when defendant was a juvenile. Therefore, only one strike prior, and one serious felony (five year) prior remained.

On appeal, the People renew the contention that the court engaged in illegal plea bargaining in the disposition of this case.²

ANALYSIS

I. Standard of Review

Both parties agree that the standard of review on the main issue—alleged illegal plea bargaining by the trial court—is the abuse of discretion standard. (*In re Andres G.* (1998) 64 Cal.App.4th 476.) That is, an appellate court may void the act of a trial court as an abuse of discretion, where the act is “in excess of the trial court’s jurisdiction” (*id.* at p. 483), and ““judicial plea bargaining in contravention of existing law [is an act] in excess of a court’s “jurisdiction.””” (*People v. Turner* (2004) 34 Cal.4th 406, 418.)

II. The Trial Court Engaged in Illegal Plea Bargaining

At the change of plea hearing, the prosecutor objected to the proposed no-contest plea and sentence as an illegal plea bargain. The prosecutor noted that, in the in-chambers discussion in April, “we discussed the defendant’s maximum sentence was 20 years four months. That was by doubling the upper term on Count I which was five years, double [to] make it ten, and then doubling midterm for each of the other [Penal Code section] 211 counts, which . . . would be another . . . four years, making it 14 years plus one third of the midterm on Count IV, which . . . would have been another 16 months, plus the [five-year] prior.

² Because we reverse the judgment based on the illegal plea bargaining issue, we need not address the People’s remaining contentions.

“And then the court also indicated that at trial most likely the defendant would get 16 years four months because that would be mid term on Count I and run consecutive time on Counts II, III, IV, and then the [five-year] prior and also the strike.

“You indicated that you would offer the defendant 11 years if he pled to the court and you got to that number by giving [defendant] mid term on Count I, doubled for the strike, which is six, plus five-year prior for a total of 11 years.”

Defense counsel indicated her “understanding of the court’s indicated [sentence] was that the court was choosing the mid term and running the others concurrent and multiplying that by two to take into account the strike and adding the [five-year] prior.

[¶] My p[er]spective is there was no illegal judicial plea bargaining, that we had discussed the maximum possible sentences, we discussed all the other factors, including the strike issue, the co-defendant, and the court indicated a proper sentence in this case.”

The court accepted the prosecutor’s description of the in-chambers discussions: “I didn’t disagree with most of what you said as it relates to our conversations in chambers.

[¶] I think the only thing I disagree with is your statement that the comparative facts of the co-defendant were not discussed until after I gave my indicated [sentence]. [¶] My memory is when we went back there we discussed the facts of this case. We discussed the facts of the co-defendant. That I figured out what his maximum exposure is. I figured out what he would get if he went to trial in the matter using the mid term analysis. And then I gave an indicated [sentence]. There was no going back and forth. There was no discussion or negotiation as to the amount of time. I just went through analysis of maximum exposure, what his exposure would be at trial, and then what the court’s

indicated [sentence] was. There was no back and forth discussion as to Your Honor would you give him less, would you do this, would you do that. It was not that kind of a discussion.”

Penal Code section 1192.5 provides in relevant part that, “Upon a plea of guilty or nolo contendere to an accusatory pleading charging a felony . . . the plea may specify the punishment to the same extent as it may be specified by the jury on a plea of not guilty or fixed by the court on a plea of guilty, nolo contendere, or not guilty, and may specify the exercise by the court thereafter of other powers legally available to it. [¶] Where the plea is accepted by the prosecuting attorney in open court and is approved by the court, the defendant, except as otherwise provided in this section, cannot be sentenced on the plea to a punishment more severe than that specified in the plea and the court may not proceed as to the plea other than as specified in the plea. [¶] If the court approves of the plea, it shall inform the defendant prior to the making of the plea that (1) its approval is not binding, (2) it may, at the time set for the hearing on the application for probation or pronouncement of judgment, withdraw its approval in the light of further consideration of the matter, and (3) in that case, the defendant shall be permitted to withdraw his or her plea if he or she desires to do so. The court shall also cause an inquiry to be made of the defendant to satisfy itself that the plea is freely and voluntarily made, and that there is a factual basis for the plea.”

Penal Code section 1192.5 contemplates a system in which an agreement is reached by the prosecutor and the defendant, and approved by the court. (*People v. Orin* (1975) 13 Cal.3d 937, 942.) A court is not authorized to plea bargain in the sense of

trading one count for another or reducing charges without the approval of the prosecutor. (*Bryce v. Superior Court* (1988) 205 Cal.App.3d 671, 676, fn. 2.) In addition, a trial judge is prohibited from entering into a bargain in the sense of negotiating a more lenient sentence than would be imposed after trial in exchange for a plea of guilty or nolo contendere. (*People v. Superior Court (Felmann)* (1976) 59 Cal.App.3d 270, 273.)

The traditional role of the judge in criminal proceedings, as envisioned by Penal Code section 1192.5 is one of approving or disapproving dispositions arrived at by counsel for defendant and the district attorney, who is the duly elected representative of the People. When the judge steps out of that role and bargains directly with the defendant as to the manner in which the judge's discretion will be exercised, the dignity of the judiciary is impaired and public confidence in the judiciary is diminished. (*People v. Superior Court (Smith)* (1978) 82 Cal.App.3d 909, 914.)

Defendant, as the trial court did below, urges that the judge did not engage in unlawful plea bargaining, but simply gave an indicated sentence. The record belies this claim. The trial judge, during the in-chambers discussions, stated that defendant would "most likely" receive a sentence of 16 years 4 months, if he were convicted at trial, but offered defendant a reduced sentence of 11 years if he pleaded before trial. Both the prosecutor's description of the in-chambers discussions and the trial judge's own memory of what had taken place agree on this point.

When the defendant simply pleads to the entire charges, and the court has merely given an indicated sentence, the sentence must be irrespective of whether guilt is adjudicated at trial or admitted by a plea. "A court may not offer any inducement in

return for a plea of guilty or nolo contendere. It may not treat a defendant more leniently because he foregoes his right to trial or more harshly because he exercises that right.” (*People v. Superior Court (Felmann)*, *supra*, 59 Cal.App.3d at p. 276.) Here, however, that is exactly what the trial judge did. Even though defendant pleaded no contest to all charges in the charging document, the plea was induced by the court’s description of differential sentences that would be imposed “most likely” if defendant went to trial (16 years 4 months), and otherwise if he pleaded before trial (11 years).

The no-contest plea and the sentence were the product of unlawful judicial plea bargaining; accordingly, the judgment must be reversed with directions to grant defendant leave to withdraw his guilty plea. (See *People v. Orin*, *supra*, 13 Cal.3d at p. 951.)

DISPOSITION

The judgment is reversed and the sentence is vacated. The trial court is directed to allow defendant to withdraw his guilty plea.

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/s/ McKINSTER

J.

We concur:

/s/ RAMIREZ

P.J.

/s/ RICHLI

J.